

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 255 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PARSHOTTAM S PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioners
MR YF MEHTA, APP for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 15/01/97

ORAL JUDGEMENT: (Per Pandya, J.)

1. The accused-appellants were tried by the learned Additional Sessions Judge, Junagadh in Sessions Case No.63 of 1989 for offences under Section 302 read with Section 149, Section 324 for accused No.5 and also for offence under Sections 147 and 148, all of I.P.C. The

accused were held guilty for offence punishable under Section 302 read with Section 149 and rigorous imprisonment for life was awarded to each one of them with sentence having been awarded for offence under Section 324 to accused No.5 as simple imprisonment for one year, and for offence under Sections 147 and 148, six months' R.I. for each of the accused. The substantive sentences are ordered to run concurrently.

2. Initially the charge came to be framed at Ex.1, which came to be altered and elaborated upon subsequently at Ex.11. The incident happened on 15.3.1989, at about 8.30 A.M. in village Divasa of Mangrol taluka. It is alleged that all the six accused with the common intention of committing the murder of Raja Naran formed an unlawful assembly and, for that purpose, accused No.1 had a wooden club, No.2 had a stick, No.3 had an axe, No.4 had a crossbar referred to as "Kosh", No.5 had a sickle and No.6 had an iron pipe. They carried out their design to kill the deceased near the bus stand of village Divasa by causing him severe injuries.

3. The complaint came to be lodged within 45 minutes as per the complaint Ex.40, at page 119 of the paper book. It was given by one Khimjibhai Sukhabhai, who, to an extent, can be said to be an eye witness. He is examined as P.W. 1, Ex.12, page 47. Another eye witness relied on by the prosecution is Jesha Jiva, P.W.6, Ex.21, at page 71. One more witness relevant for the purpose is Haluben, widow of the deceased, who has been examined as P.W.9, Ex.24, at page 81 of the paper book.

4. The deposition of Khimjibhai Sukhabhai read with the F.I.R., Ex.40 clearly goes to show that, by the time he had reached there, the incident was virtually over. He wanted to go to Mangrol from his village Antroli and for that purpose, had got into a rickshaw and several other passengers also got into the rickshaw. As he came near the bus stand of village Divasa, according to the F.I.R., he saw the deceased lying on the ground in a very seriously injured condition. In his deposition at Ex.12, has tried to make out a case that he actually saw a fight going on between two groups in which the deceased received injuries. However, he is consistent mainly in one aspect that he is unable to give particulars of the assailants either in his F.I.R. or in his deposition.

5. So far as Haluben, Ex.24 is concerned, she claims in her deposition that she on learning about the fight, immediately came on the scene as she is resident of village Divasa. At that time, her husband was alive.

She accompanied him initially to Mangrol and later on to Junagadh and during the journey, as per her deposition, she talked with her husband and that is why, according to her, she came to know the names of the assailants. However, in her cross-examination, she admitted that, though her statement was recorded almost three days after the incident, it is for the first time in the court that she has given the names of the assailants as having been told her by her husband. This would mean that her claim of talking with her husband and her husband in reply giving the details is certainly an after thought and an improvement on her part when she admits that she has disclosed these facts to the Police.

6. Under the circumstances, for the identity of the accused as well as their involvement in the matter, what remains for the prosecution to rely upon is Jesha Jiva. Rest of the witnesses, though according to the prosecution were eye-witnesses, yet they have not supported the prosecution. They are Dudabhai and the rickshaw driver-Kana and though the learned Additional Public Prosecutor, after obtaining the permission of the Court, has put questions to them in the nature of cross-examination, nothing has been brought out.

7. Coming back to the deposition of Jesha Jiva, Ex.21, it is quite obvious that, if at all he were an eye-witness, his conduct is very unnatural. According to him, he too was in that very rickshaw in which, according to him, the deceased was also travelling. The deceased was pulled out of the rickshaw and in order to save himself, the deceased had caught hold of the feet of Duda, but both of them fell down from the rickshaw, and ultimately, with the weapons they had, all the accused carried out their design and had inflicted fatal injuries to the deceased.

8. In the cross-examination of the witness, paragraph 3, page 72 of the paper book, it has been brought out that he travelled with Khimji Sukha, the complainant, in a separate rickshaw for the purpose of informing the police at village Shil. They travelled together for about 10 minutes in the rickshaw and the witness knew that Khimji Sukha was going to the Shil Police Station only for the purpose of lodging the complaint and he did not have any talk with the complainant. He also admits that he did not give particulars of the accused to the complainant.

9. He himself claims to have injured in the incident and for that purpose, was sent to the Medical Officer of

Mangrol by the Police. However, that was done on the next day on 16.3.1989 after his statement came to be recorded in the evening hours of that day. His statement, therefore, came to be recorded after 36 hours of the incident. It is for the first time, thus, from this witness that the police came to know about the identity of the assailants. Why did he remain silent for such a long time and whether he had any reason to remain silent is not disclosed by him. Obviously, the version now put forward by him in the aforesaid manner, in our opinion, is not worthy of credence.

10. As if this is enough, the weapons which are attributed to the accused as described earlier are not shown by the prosecution to be related to the injuries as found out by the doctor at Mangrol and, more particularly, the doctor at Junagadh, who carried out the post-mortem examination. The post-mortem was carried out by Dr. Bhagwatiprasad Nimavat, P.W.4, Ex.18 and has found that there were incised wounds as well as contused lacerated wounds. Injuries No.1 and 2 on the head were incised wounds and with their corresponding internal injury has resulted in death. However, with regard to the sharp cutting weapon, namely, a sickle attributed to accused No.5, the doctor has of course stated that the injury could not have been caused by a sickle which was shown to him nor by any other sickle and, so far as the axe is concerned, the reason stated in the later part of paragraph 3, page 60 of the paper book is that, looking to the size of the wound and the size of the blade, those injuries could not have been caused by that weapon, namely, the axe. This leaves only the crossbar, which is sharp edged at one end. However, the particular crossbar, article 8, when shown to the doctor, he says that the sharp edge was in fact blunt and, therefore, this weapon also could not have caused the fatal injury.

11. The circumstances which brought out by the learned Advocate, Shri Shethna, from the record clearly indicate that the prosecution has failed to prove the case against the accused.

12. The appeal is, therefore, allowed. The order of conviction and sentence is set aside. The accused-appellants are ordered to be released forthwith, if not required for any other purpose. Bail bond of accused-appellant No.5 is ordered to be cancelled. The concerned learned Sessions Judge is directed not to insist upon the convict accused-appellants to execute bonds.

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